

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 7**

UNITED STATES POSTAL SERVICE,)	
)	
Respondent)	
)	
and)	Case 14-CA-195011
)	
ROY YOUNG, an Individual)	
)	
Charging Party)	
)	

**MOTION TO TRANSFER COMPLAINT TO BOARD
AND/OR
TO REVOKE ORDER OF REMAND**

Pursuant to the NLRB's Rules and Regulations, 29 CFR § 102.50, Respondent United States Postal Service moves (1) to have the complaint herein transferred to and continued before the Board and/or (2) to revoke the Board's Remand Order, issued April 3, 2020.

I. Procedural Background

The instant Complaint and Notice of Hearing, alleging violations of sections 8(a)(1) and (3) of the Act, was issued on June 30, 2017. A hearing was held before ALJ Melissa Olivero on September 25-26, 2017. ALJ Olivero issued her Decision on September 25, 2018, relying in part of Purple Communications, Inc., 361 NLRB 1050 (2014). Respondent filed Exceptions to the Decision on October 23, 2018, arguing in part that the Board should overturn Purple Communications.

The Board subsequently overturned Purple Communications and announced a new standard that applies retroactively to all pending cases. Caesars Entertainment d/b/a Rio

All-Suites Hotel and Casino, 368 NLRB No. 143, slip op. at 8-9 (2019). Specifically, in Caesars Entertainment, the Board held that “an employer does not violate the Act by restricting the nonbusiness use of its IT resources absent proof that employees would otherwise be deprived of any reasonable means of communicating with each other, or proof of discrimination.”

In light of the Board’s decision in Caesars Entertainment, the Board on April 3, 2020, remanded the complaint to ALJ Olivero for further processing. The parties submitted no additional testimony or evidence, but filed supplemental briefs on May 26, 2020. No action has been taken by ALJ Olivero since that date.

II. Argument

Respondent urges the Board to revoke its Remand Order and immediately transfer this complaint back to the Board for further processing. Rule 102.50 provides, in pertinent part, as follows:

Whenever the Board deems it necessary to effectuate the purposes of the Act or to avoid unnecessary costs or delay, it may, at any time, after a complaint has issued pursuant to §102.15 or §102.33, order that such complaint and any proceeding which may have been instituted with respect thereto be transferred to and continued before it or any Board Member. The provisions of this subpart, insofar as applicable, govern proceedings before the Board or any Board Member pursuant to this section, and the powers granted to Administrative Law Judges in such provisions will, for the purpose of this section, be reserved to and exercised by the Board or the Board Member who will preside.

Emphasis added.

Respondent maintains that transferring this matter to the Board would, in fact, effectuate the purposes of the Act and avoid unnecessary costs or delay.

First and foremost, the record in this case was finalized during the hearing in September 2017 and all that remains to be determined is whether Respondent violated the

Act in light of the Board's decision in Caesar's Entertainment. The parties introduced no additional testimony or evidence on remand. The Board, therefore, is best positioned to interpret the facts and analyze the legal arguments set forth in the parties' supplemental briefs.

Second, despite the fact that no additional testimony or evidence was submitted by the parties and supplemental briefs were submitted on May 26, 2020, the ALJ has still not issued her decision on remand in almost 10 months – even though very few hearings have been conducted during that time due to coronavirus. Any continued delay will only serve to prejudice the parties.

CONCLUSION

Based on the foregoing, Respondent respectfully submits that the instant complaint be transferred to the Board and/or the Board's remand order be revoked.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this this 11th day of March, I served Respondent's foregoing Motion to Transfer Complaint and/or to Revoke the Remand Order as follows:

NATIONAL LABOR RELATIONS BOARD

(VIA E-FILING)

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REGION 14

(VIA E-FILING)

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